

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION**

ESKER MARTIN, III
ADC #19785-14

PLAINTIFF

v. 4:15CV00045-BRW-JJV

BEAMUR, Unit Deputy,
Pulaski County Detention Facility; *et al.*

DEFENDANTS

PROPOSED FINDINGS AND RECOMMENDATIONS

INSTRUCTIONS

The following recommended disposition has been sent to United States District Judge Billy Roy Wilson. Any party may serve and file written objections to this recommendation. Objections should be specific and should include the factual or legal basis for the objection. If the objection is to a factual finding, specifically identify that finding and the evidence that supports your objection. An original and one copy of your objections must be received in the office of the United States District Court Clerk no later than fourteen (14) days from the date of the findings and recommendations. The copy will be furnished to the opposing party. Failure to file timely objections may result in waiver of the right to appeal questions of fact.

If you are objecting to the recommendation and also desire to submit new, different, or additional evidence, and to have a hearing for this purpose before either the District Judge or Magistrate Judge, you must, at the time you file your written objections, include the following:

1. Why the record made before the Magistrate Judge is inadequate.
2. Why the evidence to be proffered at the new hearing (if such a hearing is granted) was not offered at the hearing before the Magistrate Judge.
3. The details of any testimony desired to be introduced at the new hearing in the form

of an offer of proof, and a copy, or the original, of any documentary or other non-testimonial evidence desired to be introduced at the new hearing.

From this submission, the District Judge will determine the necessity for an additional evidentiary hearing. Mail your objections and “Statement of Necessity” to:

Clerk, United States District Court
Eastern District of Arkansas
600 West Capitol Avenue, Suite A149
Little Rock, AR 72201-3325

DISPOSITION

On January 27, 2015, the Court denied Plaintiff's Application to Proceed Without Prepayment of Fees and Affidavit (Doc. No. 2) and ordered him to submit a completed application or the statutory filing fee within thirty days. (Doc. No. 3.) On February 6, 2015, that Order was returned as undeliverable. (Doc. No. 4.) On March 12, 2015, the Court entered a second Order warning Plaintiff that failure to update his address within thirty days would result in the dismissal of this action without prejudice pursuant to Local Rule 5.5(c)(2). (Doc. No. 5.)¹ In excess of thirty days have now passed and Plaintiff has not complied or responded to the Court's most recent Order.² Based on the foregoing, the Court recommends that this action be dismissed without prejudice for

¹Local Rule of the Court 5.5(c)(2), states:

It is the duty of any party not represented by counsel to promptly notify the Clerk and the other parties to the proceedings of any change in his or her address, to monitor the progress of the case, and to prosecute or defend the action diligently. A party appearing for himself/herself shall sign his/her pleadings and state his/her address, zip code, and telephone number. If any communication from the Court to a *pro se* plaintiff is not responded to within thirty (30) days, the case may be dismissed without prejudice. Any party proceeding *pro se* shall be expected to be familiar with and follow the Federal Rules of Civil Procedure.

Loc. R. 5.5(c)(2).

²That Order was also returned as undeliverable. (Doc. No. 6.)

failure to prosecute.

IT IS THEREFORE RECOMMENDED that:

1. Plaintiff's Complaint (Doc. No. 1) be DISMISSED without prejudice.
2. Any pending motions be DENIED as moot.
3. The Court certify, pursuant to 28 U.S.C. § 1915(a)(3), that an *in forma pauperis*

appeal from any Order adopting these recommendations would not be taken in good faith.

Dated this 14th day of April, 2015.



JOE J. VOLPE
UNITED STATES MAGISTRATE JUDGE